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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION

VAW

*Attorneys for Plaintiff and the Proposed Class***UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**10 COREY BUHS, on behalf of himself,
11 all others similarly situated and the
12 general public,13 Plaintiff,
14 v.
15PH BEAUTY LABS, INC., a California
corporation, individually and d/b/a
Freeman Beauty Labs; FREEMAN
BEAUTY LABS, a California
corporation,19 Defendants.
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28Case No.: CV13-05993 SJO (MRW)
CLASS ACTION**COMPLAINT FOR:**

1. **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT [CIV. CODE §§ 1750, *et seq.*]**
2. **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [BUS. & PROF. CODE §§ 17200, *et seq.*]**
3. **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW [BUS & PROF. CODE §§ 17500, *et seq.*]**
4. **BREACH OF EXPRESS WARRANTY**
5. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
6. **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT [15 U.S.C. §§ 2301, *et seq.*]**
7. **VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT [815 Ill. Comp. Stat. 502/2, *et seq.*]**

DEMAND FOR JURY TRIAL

1 Plaintiff, on behalf of himself, all others similarly situated, and the general
2 public (“Plaintiff”), alleges against Defendant pH Beauty Labs and Freeman
3 Beauty Labs (“Defendants”) the following upon his own knowledge, or where
4 there is no personal knowledge, upon information and belief and the investigation
5 of his counsel:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. §
8 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005, because the
9 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
10 \$5,000,000.00 and is a class action where Plaintiff, a member of the class, is from
11 a different state than Defendant. On information and belief, more than two-thirds
12 of the members of the class are citizens of a state different from the Defendant.
13 This Court also has original jurisdiction over the federal claim under the
14 Magnuson-Moss Warranty Act pursuant to 28 U.S.C. § 1331. This Court has
15 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337.

16 2. Personal jurisdiction is derived from the fact that the Defendants
17 maintain their headquarters in, and conduct business within, the State of California
18 and within this judicial district.

19 3. Venue is proper within this district pursuant to 28 U.S.C. § 1331(b)(2)
20 because many of the acts and transactions, including the purchases and sales giving
21 rise to this action, occurred in this district and because Defendants:

22 (i) is authorized to conduct business in this district and has
23 intentionally availed itself of the laws and markets within this
24 district through the promotion, marketing, distribution and sale
25 of its products in this district;

26 (ii) does substantial business in this district;

27 (iii) advertises to consumers residing in this district; and,

1 (iv) is subject to personal jurisdiction in this district.

2 **THE PARTIES**

3 4. At all times relevant to this matter, Plaintiff Corey Buhs was a
resident and citizen of the state of Illinois.

5 5. On information and belief, at all times relevant to this matter,
6 Defendant pH Beauty Labs, Inc. (“pH Beauty”) was a California corporation that
7 maintains its principal place of business and corporate headquarters in Los
8 Angeles, California, where it is registered with the California Secretary of State.
9 pH Beauty does business in California, Illinois and throughout the United States
10 individually and under the name of its wholly-owned subsidiary, Freeman Beauty
11 Labs, a limited liability corporation.

12 6. On information and belief, at all times relevant to this matter,
13 Defendant Freeman Beauty Labs was a California corporation that maintains its
14 principal place of business and corporate headquarters in Los Angeles, California.

15 7. Members of the putative class are reside in and are citizens of Illinois,
16 California and throughout the United States.

17 8. Defendants are manufacturers, distributors and sellers of cosmetic and
18 skin care products.

19 9. Defendants produce, market, and sell cosmetic and skin care products,
20 such as the Eclos “Apple Stem Cell” products described herein, throughout the
21 United States, including California and Illinois.

22 10. Plaintiff is informed and believes and thereon alleges that at all times
herein mentioned the Defendants and Defendants’ employees were the agents,
23 servants and employees of the Defendant, acting within the purpose and scope of
24 that agency and employment.

25 11. In addition to selling its Products on the shelf in major retail stores,
such as Walgreens and RiteAid, Defendants sells their Products directly to

1 consumers online via their website, freemanbeauty.com, and product specific
2 websites such as target.com. Defendants also distribute their Products to online
3 third party retailers for sale directly to consumers through online transactions, such
4 as sales through vendors on amazon.com.

5 **BACKGROUND FACTS**

6 **The Legacy Eclos and Current Eclos Product Packaging**

7 12. Eclos products have been sold by Defendants and by Defendants'
8 predecessors-in-interest in major retail outlets such as RiteAid, Walgreens and
9 Target, as well as online via the Internet.

10 13. Packages of the Legacy Eclos products all carry large-type bold
11 labeling reading "Contains High Potency Plant Stem Cells" followed by "A Swiss
12 Phyto Extract" in smaller, lighter-colored type. The product tubes or bottles found
13 inside are simply printed with "Plant Stem Cells, A Swiss Phyto Extract," while
14 the fine print of the ingredients printed on the packaging indicates that the Eclos
15 Products contain "Malus Domestica Fruit Cell Culture (Plant Stem Cell)".¹

16 14. The initial line of Eclos skin care and cosmetic products ("Legacy
17 Eclos Products") was as follows, all of which were, and continue to be, sold in
18 packages claiming they are "Anti-Aging" and that they contain "High Potency
19 Plant Stem Cells" by means of prominent bold display type on the external point-
20 of-sale packaging:²

21

- 22 • Facial Cleanser Skin Prep
- 23 • Cellular Activator Face Serum
- 24 • Moisture Therapy Regenerative Cream
- 25 • Restorative Eye Cream

26 ¹ See Exhibit 4.

27 ² See, e.g., Exhibit 2.

- Instant Radiance Facial Scrub
- Skin Renewal Clay Mask
- Travel/Starter Kit
- Super Concentrated Night Booster Fluid
- Intensive Skin Restoration Body Cream
- Intense Moisture Hydrating Mask
- Dark Circle & Puffy Eye Cream
- Wrinkled Forehead & Crow's Feet Cream
- Age Spot Treatment

15. At some point, the Legacy Eclos Product line, which had been manufactured for and marketed by Delicious Brands, a Texas limited liability corporation (Exhibit 1, second image), was acquired by Defendants. Defendants conduct business as “Freeman Beauty Labs” or “Freeman Beauty,” selling cosmetics, including Eclos products, on the Freeman Beauty website, on third-party websites, as well as in retail outlets such as Walgreens and Rite Aid drug stores.

16. More recently, Defendants reduced the number of Eclos products that it manufactures and distributes, while continuing to do business as Freeman Beauty. Most of the remaining products were renamed, and Defendants introduced a new package design. In addition to continuing to distribute and market its remaining inventory of Legacy Eclos Products, Defendants now manufacture and market at least eight Eclos products (“Current Eclos Products³”):

- Anti-Aging Starter Kit
- Cellular Activator Face Serum

³ Some of the Current Eclos Products are also sold online at <http://www.target.com>. (Visited July 24, 2013.)

- 1 • Daily HydraPrimer SPF 30
- 2 • Instant Radiance Facial Scrub
- 3 • Moisture Therapy Regenerative Cream
- 4 • Restorative Eye Cream
- 5 • Skin Prep Cleanser
- 6 • Skin Renewal Clay Mask

7 17. The Current Eclos Products are now labeled with both the Freeman
 8 and the Eclos logos, and are labeled “Apple Stem Cell Skin Care.”⁴ The
 9 ingredients listed on the Current Eclos Products include “Malus Domestica Fruit
 10 Cell Culture Extract.”

11 18. Various printed statements appearing on the packaging of the Legacy
 12 Eclos and Current Eclos Products are summarized in Table A (Misrepresentation
 13 Table).

14 19. The Legacy Eclos Products and the Current Eclos Products also bear
 15 prominent circular seals, printed in red ink, that make additional claims.⁵ The
 16 Legacy Eclos Products bear red seals stating either “Clinically Proven Results,
 17 Advanced Targeted Solutions, Clinically Proven Results” (“Version A,” *see* Ex. 1)
 18 or “Clinical Results, 100% of Subjects Experienced Visible Decrease in Wrinkle
 19 Depth” (“Version B,” *see* Exs. 2 & 3). The Current Eclos Products display red
 20 seals stating that “Apple Stem Cells Are Clinically Proven to Reduce the
 21 Appearance of Wrinkles and Improve the Texture of Skin in Two Weeks.” *See*

22 ⁴ Recently, the latest packaging for Defendants’ SPF Daily Hydra Primer SPF 30 product has
 23 replaced “Apple Stem Cell Skin Care” with “Apple Stem Cell Beauty.” *See* Exhibit 6.

24 ⁵ As of this filing, on the latest packaging for Defendants’ SPF Daily Hydra Primer SPF 30
 25 product, Defendant has replaced the red seal seen at the center or upper right-hand corner of the
 26 Current Eclos Products with similarly-worded bold green lettering printed near the bottom of the
 27 point-of-sale packaging and the product container. The latest wording of this claim is is:
 28 “Clinically Proven to Visibly REPAIR and RENEW Skin in Two Weeks.” *See* Table A and
 Exhibit 6.

1 Table A and Ex. 5. All of the advertising representations essentially convey the
 2 same message of scientific clinical proof of efficacy to reduce signs of aging.

3
 4 **TABLE A**
 5 Misrepresentations Appearing on the Packaging of
 6 the Legacy Eclos and the Current Eclos Products

7 Location of statement	8 Product	9 Content
10 11 12 13 14 Red Circular Seal, Front of Package	15 Legacy Eclos (Version A ⁶)	16 17 18 “Clinically Proven Results, Advanced Targeted Solutions, Clinically Proven Results”
	19 Legacy Eclos (Version B ⁷)	20 21 “Clinical Results, 100% of Subjects Experienced Visible Decrease in Wrinkle Depth”
	22 Current Eclos ⁸	23 24 “Apple Stems[sic] Cells Are Clinically Proven to Reduce the Appearance of Wrinkles and Improve the Texture of Skin in Two Weeks”
25 26 27 28 Green bold print, lower left of packages and	29 Current Eclos, recent packaging of SPF Daily	30 31 “Clinically Proven to Visibly REPAIR and RENEW Skin in Two Weeks”

⁶ See Ex. 1.

⁷ See Exs. 2 & 3.

⁸ See Ex.5.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Location of statement	Product	Content
	product containers.	Hydra Primer SPF 30 ⁹ .	
	Front of Package	Legacy Eclos (Version A)	“Contains High Potency Plant Stem Cells ...A Swiss Phyto Extract”
		Legacy Eclos (Version B)	
		Current Eclos	“Apple Stem Cell Skin Care”
		Current Eclos, recent packaging of SPF Daily Hydra Primer SPF 30.	“Apple Stem Cell Beauty”
	Ingredients Panel	Legacy Eclos	“Malus Domestica Fruit Cell Culture (Plant Stem Cell)”
		Current Eclos	“Malus Domestica Fruit Cell Culture Extract”
	Front of Package & Front of Product Containers	Current and Legacy Eclos Products	“ANTI-AGING”

⁹ See Ex. 6.

1 20. Defendants' advertising claims seek to leverage intensive media
 2 attention regarding numerous "hot-button" issues surrounding human embryonic
 3 stem cell research, which has created widespread awareness amongst members of
 4 the general public that stem cell therapies are powerful modern "cutting edge"
 5 medical procedures.¹⁰ Therapeutic usage of mammalian stem cells, and human
 6 embryonic stem cells in particular, have been the subject of intensive scientific
 7 research.¹¹

8 21. In contrast, Defendants' claims notwithstanding, apple stems cells are
 9 not the subject of any legitimate peer-reviewed research reported in recognized
 10 scientific journals.¹² There are no specific references to be found on the exterior of
 11 any packages that might support defendants' claims regarding "clinical studies."
 12 The Freeman Beauty website does assert, vaguely, that "[c]linal research proves
 13 100% of women reported visible skin rejuvenation via a reduction in wrinkles and
 14 improved skin texture over a 2 week period when using Eclos™ anti-aging skin
 15 care, formulated with Apple Stem Cell Technology."¹³ Additional claims of
 16 clinical research are found elsewhere on the Freeman Beauty website, such as
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 18

19 ¹⁰ See, e.g. A. Pollock, "Cloning Is Used to Create Embryonic Stem Cells," *New York Times*,
 20 May 15, 2013, www.nytimes.com/2013/05/16/science/scientists-use-cloning-to-create-embryonic-stem-cells.html.

21 ¹¹ See, e.g., H.S. Bernstein, "Cardiac Repair And Restoration Using Human Embryonic Stem
 22 Cells," *Regenerative Medicine* 7, 697-712 (September 2012); O. Yabut, and H.S.Bernstein, "The
 23 Promise Of Human Embryonic Stem Cells In Aging-Associated Diseases," *Aging (Albany, N.Y.)*
 3, 494-508 (May 2011).

24 ¹² A search of the National Center for Biotechnology Information ("NCBI") PUBMED online
 25 database of scientific journal articles [maintained by US National Library of Medicine and the
 National Institutes of Health ("NIH")] for the phrase "apple stem cells" yielded no results.
 Search performed July 23, 2013 at <http://www.ncbi.nlm.nih.gov/>.

26 ¹³ See, e.g., www.freemanbeauty.com/product/restorative-eye-cream — "Ingredients" tab. (last
 27 visited July 23, 2013.)

1 “*100% of 20 participants in a clinical study on Apple Stem cells experienced a
2 decrease in wrinkle appearance and improved skin texture within 2 weeks.”¹⁴

3 22. The package insert of the Legacy Eclos Products proclaim “New
4 Hope for Aging Skin” arising from the “tremendous ability” of “Plant Stem Cells
5 extracted from a rare Swiss apple, (Uttwiler Spätlauber)” to stimulate human stem
6 cells in human skin.¹⁵ Moreover, the side panels of the exterior of the cartons
7 containing the Legacy Eclos Products displays these same claims regarding the
8 “tremendous” powers of “Plant Stem Cells” obtained from the “Uttwiler
9 Spätlauber” apple.¹⁶

10 23. The Legacy Eclos Products package insert goes on to headline
11 “Clinically Proven Results” with figures showing “skin before” and “skin after” 28
12 days, and stating, without reference to any publication, that “100% of the women
13 saw a reduction in wrinkle appearance within 2 weeks.” The so-called “clinical
14 research” appears to be derived from some unknown source, also described
15 without attribution on the website of another purveyor of a “Swiss Apple Wrinkle
16 Remedy,” which describes a 28-day uncontrolled “clinical study” of “20 volunteers
17 aged from 37 to 64” which “showed a ... visible decrease in wrinkle depth for
18 100% of the subjects.”¹⁷

19 24. Defendants’ alleged “clinical studies” may be ultimately derived from
20 certain papers claiming to isolate and study stem cells or various extracts from
21 stem cells of the Uttwiler Spätlauber apple, a “cultivar” or “strain” of the common
22 apple, *Malus domestica*, which is the Latin name printed in the ingredients panels

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24 ¹⁴ See <http://www.freemanbeauty.com/klouteclos>. (Visited July 29, 2013.)

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26 ¹⁵ See Ex. 1, third image.

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28 ¹⁶ See Ex. 1, second image, and Ex. 2.

27 ¹⁷ See <http://www.lather.com/swissapple/>. (Visited July 20, 2013.)

1 of the Legacy Eclos and the Current Eclos Products.¹⁸ The source of such research
 2 appears to lie in reports published by the German journal, SOFW, English
 3 translations of which may be found online by searching its website.¹⁹ SOFW is
 4 not a peer-reviewed journal; its sole purpose is to promote the formulation and sale
 5 of cosmetic treatments, and the research studies it publishes are typically
 6 performed by employees of companies that promote and sell various cosmetic
 7 products using the cells or cell extracts that are under review.

8 25. In the case of “Apple Stem Cell” products, the claimed “research”
 9 appears to ultimately originate from Mibelle Biochemistry (“Mibelle”), a European
 10 purveyor of a “liposomal extract” of “de-differentiated apple callus cells,” that
 11 Mibelle markets as PhytoCelTech™ Malus Domestica.²⁰ Employees of Mibelle
 12 appear to be responsible for most or all of the so-called “research papers”
 13 regarding the purported “anti-aging” properties of “plant stem cells” and “stem cell
 14 extracts.”

15 **DEFENDANTS’ MISREPRESENTATIONS REGARDING STEM CELLS**

16 **Statements that Defendants’ products “contain stem cells” are false.**

17 26. The Current Eclos Products. The Eclos Products’ packaging
 18 uniformly proclaims that that each product “Contains High Potency Plant Stem
 19 Cells.” Further, their ingredient panels state that each product contains “Malus
 20 Domestica Fruit Cell Culture (Plant Stem Cell).” *See* Table A. This is patently
 21 false; stem cell culture is a delicate process requiring temperature-controlled

22 ¹⁸ See Table A.

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 24 ¹⁹ http://www.sofw.com/index/sofw_en/Search.html. (Visited July 20, 2013.)

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 26 ²⁰ *See*
 27 http://www.mibellebiochemistry.com/pdfs/Plant_Stem_Cell_Extract_for_Longevity_of_Skin_and_Hair_SFW_05_08.pdf. (Viewed July 27, 2013.)

1 incubators and a constant supply of growth factors presented to the cells in
2 specially-formulated sterile media. Stem cells die quickly after removal from such
3 controlled conditions. After cell death, the cells are quickly broken down by
4 enzymatic, chemical and bacterial means. To assert that any cosmetic product
5 could contain anything resembling a stem cell after undergoing manufacture via
6 combination with dozens of additional herbal and chemical components is a
7 patently absurd falsehood that seeks to prey upon the average consumer's
8 ignorance of modern cell biology.

9 27. The Current Eclos Products. The Current Eclos Products have
10 ingredient panels stating the actual purported active apple-derived substance as
11 "Malus Domestica Fruit Cell Culture Extract." This ingredient language avoids
12 claiming actual stem cell content in the ingredients, but Defendants go on and
13 place the tagline "Apple Stem Cell Skin Care" conspicuously presented beneath
14 the "Eclos" logo on the front of all packages, as well as the wording "Apple
15 Stems[sic] Cells Are Clinically Proven" prominently displayed in the red circular
16 seal. *See Table A.* These claims strongly suggest to the average consumer that the
17 Current Eclos Products do contain apple stem cells, and are therefore false and
18 misleading as well.

19 28. The Products also claim: "Clinical research proves 100% of women
20 reported visible skin rejuvenation via a reduction in wrinkles and improved skin
21 texture over a 2 week period when using Eclos™ anti-aging skin care, formulated
22 with Apple Stem Cell Technology;" and "Eclos™ is paraben-free, sulfate-free, free
23 of synthetic fragrances, synthetic dyes, mineral oil and petroleum," both of which
24 are false and deceptive.

25 **Statements that apple stem cell extracts are "clinically proven" are false.**

26 29. The packaging of both the Legacy Eclos Products and the Current
27 Eclos Products explicitly state, by means the prominent red circular seal, that
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1 Defendants' products are "clinically proven." *See* Table A. In addition, package
2 inserts within the cartons, readily accessible by consumers before and after
3 purchase, detail supposedly "clinically proven results."²¹ These statements are
4 false, inasmuch as any purported "clinical proofs" of efficacy of the products are
5 based on severely-flawed uncontrolled experiments using tiny sample sizes,
6 performed by employees of cosmetic companies and published, if at all, without
7 peer review.

8 **FACTS**

9 30. This is a consumer protection class action lawsuit on behalf of
10 purchasers of Defendants' Current Eclos Products and Legacy Eclos Products
11 (collectively, the "Products" or "Eclos Products").

12 31. Defendant manufactures, advertises, distributes and sell the Products
13 in OTC aisles in major retail stores throughout California.

14 32. Defendants primarily advertise and promote the Products through
15 uniform labeling claims on the front of the Products' package. Label descriptions
16 on the Products' packaging, taken as a whole, represent there are various uses,
17 benefits and characteristics to the Products. *See* Exs. 1 - 6 (Photographs of
18 Packaging).

19 33. Defendants' Products are also the subject of an extensive and
20 comprehensive advertising and marketing campaign in various media including the
21 Internet. *See*, e.g., <http://www.freemanbeauty.com/klouteclos>;
22 <http://www.freemanbeauty.com/eclos>.

23 34. Defendants' Legacy Eclos Products were produced in at least eleven
24 (11) varieties: Facial Cleanser Skin Prep, Cellular Activator Face Serum, Moisture
25 Therapy Regenerative Cream, Restorative Eye Cream, Instant Radiance Facial

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27 ²¹ *See* Ex. 1, third image.
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1 Scrub, Skin Renewal Clay Mask, Super Concentrated Night Booster Fluid,
2 Intensive Skin Restoration Body Cream, Intense Moisture Hydrating Mask, Dark
3 Circle & Puffy Eye Cream, Wrinkled Forehead & Crow's Feet Cream and Age
4 Spot Treatment.

5 35. During the Class Period and continuing thereafter, Plaintiff was
6 exposed to and saw Defendants' claims about the Legacy Eclos Products and the
7 Current Eclos Products ("Products"), which claimed, *inter alia*, that the Products
8 were effective remedies for wrinkles and other dermatological symptoms of aging.
9 Plaintiff is a consumer as described herein.

10 36. Defendants market a Travel/Starter Kit, which was purchased by
11 Plaintiff Corey Buhs, that contains six varieties of the above Legacy Eclos
12 Products, *i.e.*, Facial Cleanser Skin Prep, Cellular Activator Face Serum, Moisture
13 Therapy Regenerative Cream, Restorative Eye Cream, Instant Radiance Facial
14 Scrub, and Skin Renewal Clay Mask

15 37. Plaintiff purchased the Legacy Products at Walgreens locations in
16 Peoria and Bloomington Illinois on twelve or more occasions. Plaintiff's first
17 purchase occurred approximately one year ago, in August 2012. Plaintiff spent
18 \$19.99 on that initial purchase and then purchased a package per month for eleven
19 months thereafter.

20 38. Plaintiff put faith into the Products because of the advertising claims
21 that the plant-based stem cells extract would minimize the appearance of fine lines,
22 wrinkles and tired skin; that the Products would accordingly deliver a smooth and
23 radiant complexion; that scientists/researchers found that plant stem cells from rare
24 swiss apple show tremendous ability to stimulate skin stem cells encouraged aging
25 skin to behave like younger skin; that phytoplex²⁴ was in the Product, which knew
26 how to work in synergy to minimize the appearance of wrinkles. After using all of
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1 the Products for a little over a year, Plaintiff's skin and wrinkles have not reduced
2 in aging and have actually gotten worse.

3 39. All of the Legacy Eclos Products contain the same purportedly
4 efficacious ingredient ("Malus Domestica Fruit Cell Culture (Plant Stem Cell)"²²).
5 Point-of-purchase packaging for the Legacy Eclos Products claim they are
6 "Clinically Proven," claim they "Contain High Potency Plant Stem Cells," and use
7 the same "Swiss Phyto Extract" designation that is not understandable to the
8 average consumer.²³ All of the Legacy Eclos Products are or were sold in retail
9 stores as well as online via the Internet, use efficacy statements that are entirely
10 within the Defendants' discretion, and bear the same advertising claims.

11 40. Defendants' Current Eclos Products come in seven (7) varieties:
12 Cellular Activator Face Serum, Daily HydraPrimer SPF 30, Instant Radiance
13 Facial Scrub, Moisture Therapy Regenerative Cream, Restorative Eye Cream, Skin
14 Prep Cleanser, Skin Renewal Clay Mask. Defendants also market an "Anti-Aging
15 Starter Kit" that contains several varieties of the Current Eclos Products.

16 41. All of the Current Eclos Products contain the same purportedly
17 efficacious ingredient (Malus Domestica Fruit Cell Culture Extract); claim to be
18 "Clinically Proven," and that "Apple Stems[sic] Cells Are Clinically Proven to
19 Reduce the Appearance of Wrinkles and Improve the Texture of Skin in Two
20 Weeks."²⁴ All of the Current Eclos Products use the same "Apple Stem Cell Skin
21 Care"²⁵ (or "Apple Stem Cell Beauty"²⁶) designation that is not understandable to

22 *See* Ex. 4.

23 *See* Ex. 3.

24 *Or* that they are "Clinically Proven to Visibly REPAIR and RENEW Skin in Two Weeks," in
25 the case of the latest packaging for Defendants' Daily HydraPrimer SPF 30 product.

26 *See* Ex. 5.

27 *See* Ex. 6.

1 the average consumer; are sold in retail stores as well as online via the Internet; use
2 efficacy statements that are entirely within the Defendants' discretion; and bear the
3 same advertising claims.

4 42. Plaintiff Buhs first discovered Defendants' unlawful acts described
5 herein in 2013, when he learned that Defendants' Products violate applicable law
6 and that Defendants' labels for the Products were untrue and/or misleading.
7 Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier
8 Defendants' unlawful acts described herein because the violations were known to
9 Defendants, not to him, throughout the class period defined herein. Plaintiff is not
10 a nutritionist, drug expert, or scientist, but rather a lay consumer who did not have
11 the specialized knowledge that Defendants had.

12 43. In purchasing Defendants' Products, Plaintiff Corey Buhs relied upon
13 the various representations Defendants made on the Products labels, including but
14 not limited to "Clinically Proven Results, Advanced Targeted Solutions . . .,"
15 "Clinical Results, 100% of Subjects Experienced Visible Decrease in Wrinkle
16 Depth," "Apple Stems[sic] Cells Are Clinically Proven to Reduce the Appearance
17 of Wrinkles and Improve the Texture of Skin in Two Weeks," "Contains High
18 Potency Plant Stem Cells ... A Swiss Phyto Extract," "Apple Stem Cell Skin
19 Care," and "[ingredients:] Malus Domestica Fruit Cell Culture (Plant Stem Cell)"
20 or "[ingredients:] Malus Domestica Fruit Cell Culture Extract." See Exs. 1 - 6 &
21 Table A (Misrepresentations Table).

22 44. Defendants' Products did not work for Plaintiff as advertised. But for
23 Defendants' advertising claims as described herein, Plaintiff would not have
24 purchased the Products.

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LEGACY ECLOS AND CURRENT ECLOS PRODUCTS

45. Generally, Defendants advertise their Legacy Eclos and Current Eclos Products (“Products” or “Eclos Products”) through misrepresentations and omissions, including but not limited to, claims that the Products:

- are anti-aging remedies, where “apple stem cells”, or “fruit cell culture extracts” are ingredients in all the challenged Products, purportedly capable of remediating wrinkled skin and other dermatological symptoms of aging;
- are “Proven” or “Clinically Proven” as effective in the improving the appearance of human skin, when such clinical proof, if it even exists, consists of biased studies performed by investigators compensated by Defendants or their parent or subsidiary corporations, or studies that fall short of relevant agency advertising standards, facts which are not disclosed to consumers.

A. The Legacy Eclos Products

46. Through its packaging, Defendant advertises that the Legacy Eclos Products are “Clinically Proven;” contain “High Potency Plant Stem Cells” which are a “Swiss Phyto Extract” and provide “Advanced Targeted Solutions” or “Visible Decrease in Wrinkle Depth.” *See Table A and Exs. 1-3.*

47. In purchasing the Legacy Eclos Products, Plaintiff and consumers reasonably relied upon the various representations Defendants make on the Product's packaging label and their prevalent advertising campaign.

48. The claimed efficacious ingredients in the Legacy Eclos Products include “Fruit Cell Culture (Plant Stem Cell).” *See* Table A and Ex. 4.

49. The stem-cell derived ingredients, however, even if they were otherwise effective, are so greatly diluted and degraded by manufacturing

1 processes as to be effectively non-existent in the Product such that the Product is
2 ineffective for its intended uses.

3 50. The so-called “fruit cell culture (stem cell)” used in the Legacy Eclos
4 Products provide no cosmetic benefits. As all of the Legacy Eclos Products are
5 applied externally, most or all of the purported stem-cell derived ingredients, if
6 they even existed at all in the Products, will never permeate the skin.

7 51. Defendants know or must be aware that the Products cannot provide
8 the cosmetic benefits for which the Defendants advertise them.

9 52. In addition, Defendants’ Legacy Eclos Products do not relieve
10 symptoms of aging such as wrinkles, much less provide “Targeted Advanced
11 Targeted Solutions” or “Visible Decrease in Wrinkle Depth.”

12 53. Defendants’ claims are also misleading and false because the Legacy
13 Eclos Products have not been “Clinically Proven” nor have Defendants supported
14 their claims of “Clinically Proven Results, Advanced Targeted Solutions” or
15 “Visible Decrease in Wrinkle Depth” by credible scientific evidence suitable to
16 meet relevant, federal agency advertising standards. Also, Defendants or other
17 companies manufacturing similar products sponsored the clinical studies
18 Defendants rely on to make their “Clinically Proven” claims, a fact not disclosed to
19 consumers.

20 54. These “Clinically Proven” claims are further false and deceptive
21 because a reasonable consumer is likely to believe the Products are used, endorsed,
22 or recommended by doctors (i.e., “clinicians”) practicing medicine in “clinical”
23 settings, which promotes consumer confusion.

24 55. The Federal Trade Commission (“FTC”) enforces OTC cosmetic
25 advertising and applies the same standards as any consumer product: a
26 “reasonable consumer” standard. The FTC requires OTC cosmetic advertising to
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1 be truthful, non-deceptive, fair, and for manufacturers to provide evidence that
2 backs up their claims.

3 56. The Legacy Eclos Products are sold as ointments or salves with prices
4 for each package ranging from \$19.99 to \$34.99. Hence, Defendants' unfair and
5 deceptive practices have enriched them by millions of dollars, at the expense of
6 tens of thousands of Americans.

7 57. Absent the misrepresentations and omissions described herein, which
8 are material to an average consumer, Plaintiff and other consumers would not have
9 purchased the Legacy Eclos Products.

10 58. In purchasing Products that were falsely or deceptively advertised,
11 Plaintiff suffered injury in fact in the form of the lost purchase price of the
12 Products.

13 59. Plaintiff seeks justice for himself and similarly-situated consumers of
14 the Legacy Eclos Products, by means of this action to enjoin the ongoing deceptive
15 practices described herein.

16 60. Further, Plaintiff and the Class purchased Defendants' Products
17 instead of competing products based on the false statements and misrepresentations
18 described herein, suffering economic injuries.

19 **B. The Current Eclos Products**

20 61. Through its packaging, Defendant advertises that the Current Eclos
21 Products are "Clinically Proven;" that "Apple Stems[sic] Cells Are Clinically
22 Proven to Reduce the Appearance of Wrinkles and Improve the Texture of Skin in
23 Two Weeks," that the Current Eclos Products provide "Apple Stem Cell Skin
24 Care" and contain "Malus Domestica Fruit Cell Culture Extract." *See Table A.*

25 62. In purchasing the Current Eclos Products, Plaintiff and consumers
26 reasonably relied upon the various representations Defendant makes on the
27 Product's packaging label and its prevalent advertising campaign, which includes
28

1 website advertising claiming to deliver, among other things, “[h]igh-tech, anti-
2 aging skin care with Apple Stem Cell Technology²⁷.²⁷”

3 63. The claimed ingredients in the Current Eclos Products include “Fruit
4 Cell Culture Extract.” See Table A.

5 64. However, the stem-cell derived ingredients, even if they were
6 otherwise effective, are so greatly diluted and degraded by manufacturing
7 processes as to be effectively non-existent in the Product such that the Product is
8 ineffective for its intended uses.

9 65. The so-called “fruit cell culture extract” ingredient used in the Current
10 Eclos Products provides no health benefits. As all of the Current Eclos Products
11 are applied externally, most or all of the purported stem-cell derived ingredients,
12 even if they were not degraded, will never permeate the skin due to the
13 exceptionally small amount of such ingredients actually present in the Products.

14 66. Defendants know the Current Eclos Products do not provide the
15 cosmetic benefits for which Defendants advertise them. Defendants’ Current Eclos
16 Products do not relieve symptoms of aging such as wrinkles.

17 67. Defendants’ claims are also misleading and false because the Current
18 Eclos Products have not been “Clinically Proven” sufficient to FTC advertising
19 standards that apply to these claims, nor have Defendants supported their claims
20 that “Apple Stems[sic] Cells ... Reduce the Appearance of Wrinkles and Improve
21 the Texture of Skin in Two Weeks,” by credible scientific evidence suitable to
22 meet relevant, federal agency advertising standards. Also, Defendants or other
23 companies manufacturing similar products sponsored the clinical studies
24 Defendants rely on to make their “Clinically Proven” claims, a fact not disclosed to
25 consumers.

26
27 ²⁷ See <http://www.freemanbeauty.com/eclos>.
28

1 **C. Allegations as to all Products**

2 68. The Eclos Products' "Clinically Proven" claims are further false and
3 deceptive because a reasonable consumer is likely to believe the Products are used,
4 endorsed, or recommended by doctors (i.e., "clinicians") practicing medicine in
5 "clinical" settings.

6 69. The Products are sold with prices ranging from \$12.99 to \$24.99.
7 Hence, Defendants' unfair and deceptive practices have enriched them by millions
8 of dollars, at the expense of tens of thousands of consumers.

9 70. Absent the misrepresentations and omissions described herein, which
10 are material to an average consumer, Plaintiff and other consumers would not have
11 purchased the Eclos Products.

12 71. In purchasing Defendants' Products that were falsely or deceptively
13 advertised, Plaintiff suffered injury in fact in the form of the Products' lost
14 purchase price.

15 72. Plaintiff seeks justice for himself and similarly-situated consumers of
16 the Products, by means of this action to enjoin the ongoing deceptive practices
17 described herein, and for retrospective injunctive relief as well.

18 73. Further, Plaintiff and the Class purchased Defendants' Products
19 instead of competing products based on the false statements and misrepresentations
20 described herein, suffering economic injuries.

21 74. Defendants' advertising of the Products are and have been the subject
22 of an extensive, comprehensive, and uniform marketing campaign in various media
23 throughout California, Illinois, and the rest of the United States, including the
24 Internet.

25 75. Defendants advertise, distribute and sell the Products in the aisles in
26 major retail stores throughout California, Illinois, and the United States. All of the
27 Products' packaging is uniform, no matter in which State it appears.

1 76. Defendants primarily advertise and promote the Products through the
2 labeling claims and images on the front of the Products' packages. Label
3 descriptions on the Products' packaging, taken as a whole and in context, clarify
4 the purported uses, benefits and characteristics of the Products. As would any
5 reasonable consumer, Plaintiff and the Class relied on the Products' packaging
6 claims, taken as a whole and in context, in purchasing the Products.

7 77. Defendants' marketing and promotion of the Products was supported
8 by false and misleading claims containing material omissions and
9 misrepresentations, which Plaintiff and Class members relied upon in making their
10 decision to purchase the Products.

11 78. Defendants also do not explain terms such as "anti-aging," "stem
12 cell," "fruit cell culture," "fruit cell culture extract," "Swiss Phyto Extract," "Malus
13 Domestica," or "High-Tech Apple Stem Cell Technology" in a language
14 understandable to an average consumer.

15 79. California Health and Safety Code, Division 104, Part 5, contains the
16 Sherman Food, Drug, and Cosmetic Law ("Sherman Law," located at Cal. Health
17 & Safety Code §§ 109875-111915). The Sherman Law is explicitly authorized by
18 the FDCA. 21 U.S.C. § 343-1.

19 80. The Sherman Law defines a "drug" as "any article other than food,
20 that is used or intended to affect the structure or any function of the body of human
21 beings or any other animal [*emphasis added*]." Cal. Health & Safety Code §
22 109925(c).

23 81. Each of the Products are labeled as containing or "High Potency
24 Plant Stem Cells" or "Apple Stems [sic] Cells" and "Apple Stem Cell Skin Care"
25 or "Apple Stem Cell Beauty", which are "Anti-Aging" "Clinically Proven," to
26 cause "Visible Decrease in Wrinkle Depth," or "Reduce the Appearance of
27 Wrinkles and Improve the Texture of Skin in Two Weeks" or "Visibly REPAIR &
28

1 RENEW Skin," which makes the Products unapproved new drugs, which are
 2 accordingly misbranded under the California Sherman Law. Cal. Health & Safety
 3 Code §§ 110100, 110105, 110110, 110111.

4 82. The Products are each also a "Cosmetic" under Section 109900 of the
 5 Sherman Law. *See also* 21 U.S.C. § 321(i). Accordingly, the Products are subject
 6 to the Cosmetics portions of the FDCA and Sherman Law, in addition to being
 7 subject to the drug and OTC regulations described herein.

8 83. Defendants, however, went beyond cosmetics advertising with the
 9 Products, by claiming the Products do not just cleanse or beautify but work a
 10 chemical effect on human skin, changing its appearance, texture and depth or
 11 wrinkles.

12 84. Defendants' marketing and promotion of the Products was supported
 13 by false and misleading claims containing material omissions and
 14 misrepresentations.

15 85. When purchasing the Products, Plaintiff and the class were seeking
 16 products that would provide the benefits, and possessed the efficacy and
 17 characteristics, as Defendants marketed, promised, represented and warranted.

18 86. Plaintiff and the Class purchased the Products believing they had the
 19 qualities they sought, based on the Products' false and deceptive labeling and
 20 marketing, but the Products were actually unacceptable to them as they did not
 21 possess the benefits, efficacy, and characteristics advertised.

22 87. At all times relevant herein, Defendants had a duty to disclose
 23 additional and/or complete, accurate information to purchasing consumers, to
 24 correct all misunderstandings its omissions and misrepresentations created in the
 25 minds of those consumers.

26 88. Moreover, like all reasonable consumers and members of the Class,
 27 Plaintiff and the Class consider a label's compliance with federal law a material
 28

1 factor in their purchasing decisions. Plaintiff and the Class are generally aware the
2 federal government carefully regulates cosmetics and therefore have come to trust
3 that information conveyed on packaged cosmetic labels is truthful, accurate,
4 complete, and fully in accordance and compliance with the law. As a result,
5 Plaintiff and the Class trust they can compare competing products on the basis of
6 their labeling claims, to make a purchasing decision.

7 89. Like all reasonable consumers and members of the Class, Plaintiff and
8 the Class would not purchase a cosmetic they knew was misbranded under federal
9 law, *see* 21 U.S.C. § 352, which the federal government prohibits selling, *id.* § 331,
10 and which carries with its sale criminal penalties, *id.* § 333. *See also* Cal. Health &
11 Safety Code §§ 110100, 110105, 110110, 110111. Plaintiff and the Class could
12 not trust that the label of a product misbranded under federal law is truthful,
13 accurate and complete. In fact, the Defendants were promoting the Products in
14 violation of the FDCA, making the Products misbranded under California's
15 Sherman Law.

16 90. Similarly, like all reasonable consumers and Class members, Plaintiff
17 and the Class would not purchase a cosmetic they knew was an illegally marketed
18 new drug for which the FDA has not determined its safety and efficacy.

19 91. In light of the foregoing, reasonable consumers, including Plaintiff
20 and other Class members, were and are likely to be deceived by Defendants'
21 advertising and marketing practices as detailed herein.

22 92. Plaintiff and the Class will be exposed to the Products' false,
23 deceptive, and unlawful labeling claims in the future when they visit a retail store
24 for anti-aging remedies and cosmetic products unless Defendants agree, or are
25 enjoined, to change the Products' labeling in response to Plaintiff's claims as set
26 forth herein and in Plaintiff's notice letter. Moreover, Plaintiff and the Class seek
27 retroactive injunctive relief, to obtain restitutionary disgorgement or restitution of
28

1 all monies that may have been obtained by Defendants through unfair, unlawful, or
2 fraudulent business acts or practices.

3 93. Instead of receiving Products that had the benefits, advantages,
4 endorsements, proof, and characteristics as advertised, Plaintiff and other Class
5 members received a product worth much less, or which was worthless, since the
6 Products do not work; cause no effect or effects reverse of that advertised; and did
7 not possess the characteristics, benefits, endorsements, and proof of efficacy, as
8 advertised by Defendants.

9 94. Plaintiff and the Class lost money as a result of Defendants' deception
10 in that Plaintiff and the Class did not receive what they had paid for.

11 95. Plaintiff and the Class altered their position to their detriment and
12 suffered damages in an amount equal to the amount they paid for the Products over
13 the class period.

14 **CLASS ACTION ALLEGATIONS**

15 96. Plaintiff brings this action on behalf of himself and all other similarly
16 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
17 Rules of Civil Procedure and seeks certification of the following Class against
18 Defendants for violations of Illinois state laws, California state laws, and similar
19 laws in other states:

20 **Multi-State Class Action**

21 All persons in the United States who, within the applicable statute
22 of limitations under their respective state's consumer fraud act,
23 purchased Defendants' Legacy Eclos Products or Current Eclos
24 Products, including all iterations/variations of the aforementioned

1 products (“the Products”), from August 13, 2003 to the present
 2 (“Class Period”) for personal or household use.²⁸

3 Excluded from the Class are Defendants, their parents, subsidiaries,
 4 affiliates, officers and directors, and those who purchased the Products for
 5 the purpose of resale.

6 41. *In the alternative*, Plaintiff brings this action on behalf of himself and
 7 all other similarly situated Illinois and California residents pursuant to Rule 23(a),
 8 (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of
 9 the following Classes:

10 **Illinois Class Action**

11 All Illinois residents who, within the applicable
 12 statute of limitations, purchased the Products for
 13 personal or household use and not for resale;

14

15 ²⁸ While discovery may alter the following, Plaintiff preliminarily avers that the
 16 other states with similar consumer fraud laws under the facts of this case include,
 17 but are not limited to: Arkansas (Ark. Code § 4-88-101, *et seq.*); California (Cal.
 18 Bus. & Prof. Code §17200, *et seq.* and Cal. Civil Code § 1750, *et seq.*); Colorado
 19 (Colo. Rev. Stat. § 6-1-101, *et seq.*); Connecticut (Conn. Gen. Stat. § 42-110, *et
 20 seq.*); Delaware (Del. Code tit. 6, § 2511, *et seq.*); District of Columbia (D.C. Code
 21 § 28-3901, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Hawaii (Haw. Rev. Stat.
 22 § 480-1, *et seq.*); Idaho (Idaho Code § 48-601, *et seq.*); Illinois (815 ICLS § 505/1,
 23 *et seq.*); Maine (Me. Rev. Stat. tit. 5 § 205-A, *et seq.*); Massachusetts (Mass. Gen.
 24 Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*);
 25 Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010, *et
 26 seq.*); Montana (Mo. Code. § 30-14-101, *et seq.*); Nebraska (Neb. Rev. Stat. § 59-
 27 1601, *et seq.*); Nevada (Nev. Rev. Stat. § 598.0915, *et seq.*); New Hampshire (N.H.
 28 Rev. Stat. § 358-A:1, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New
 Mexico (N.M. Stat. § 57-12-1, *et seq.*); New York (N.Y. Gen. Bus. Law § 349,*et
 seq.*); North Dakota (N.D. Cent. Code § 51-15-01, *et seq.*); Oklahoma (Okla. Stat.
 tit. 15, § 751, *et seq.*); Oregon (Or. Rev. Stat. § 646.605, *et seq.*); Rhode Island
 (R.I. Gen. Laws § 6-13.1-1, *et seq.*); South Dakota (S.D. Code Laws § 37-24-1, *et
 seq.*); Virginia (VA Code § 59.1-196, *et seq.*); Vermont (Vt. Stat. tit. 9, § 2451, *et
 seq.*); Washington (Wash. Rev. Code § 19.86.010, *et seq.*); West Virginia (W. Va.
 Code § 46A-6- 101, *et seq.*); and Wisconsin (Wis. Stat. § 100.18, *et seq.*).

1 *and*

2 **California Class Action**

3 All California residents who, within the applicable
4 statute of limitations, purchased the Products, for
5 personal or household use and not for resale.

6 Excluded from the Illinois and California Classes are
7 Defendants, their parents, subsidiaries, affiliates, officers and
8 directors, and those who purchased the Products for the
9 purpose of resale.

10 97. The proposed Class is so numerous that individual joinder of all its
11 members is impracticable. Due to the nature of the trade and commerce involved,
12 however, Plaintiff believes the total number of Class members is at least in the tens
13 of thousands of persons in the States of Illinois and California, and in the hundreds
14 of thousands of persons in the United States. While the exact number and
15 identities of the Class members are unknown at this time, such information can be
16 ascertained through appropriate investigation, discovery or Class definition. The
17 disposition of the claims of the Class members in a single class action will provide
18 substantial benefits to all parties and to the Court.

19 98. Pursuant to Rule 23(b)(2), Defendants have acted or refused to act on
20 grounds generally applicable to the Class, thereby making final injunctive relief or
21 corresponding declaratory relief and damages as to their Products appropriate with
22 respect to the Class as a whole. Retrospective injunctive relief would seek a recall
23 of the Products' false, deceptive and unlawful labeling and benefit the Class
24 equally and as a whole. Prospective injunctive relief would ensure that Class
25 members are only exposed to lawful, truthful and non-misleading advertising of
26 the Products in the future, which will also benefit each member of the Class in
27 equal but indivisible measure. In particular, Defendants have misrepresented or
28 failed to disclose the true nature of the Products being marketed and distributed, as

1 detailed herein, through misrepresentations and omissions on the labeling, by
2 which Defendants acted and refused to act on grounds generally applicable to the
3 Class as a whole.

4 99. There is a well-defined community of interest in the questions of law
5 and fact involved affecting the Plaintiff and the Class and these common questions
6 of fact and law include, but are not limited to, the following:

- 7 a. Whether the claims discussed above are true, misleading, or
8 reasonably likely to deceive an average consumer;
- 9 b. Whether Defendants' alleged conduct violates public policy;
- 10 c. Whether the alleged conduct constitutes violations of the laws
11 asserted herein;
- 12 d. Whether Defendants engaged in false or misleading advertising;
- 13 e. Whether Plaintiffs and Class members are entitled to declaratory
14 and injunctive relief (retrospective and prospective); and
- 15 f. The method of calculation and amount of restitution or damages to
16 the Class.

17 100. Plaintiff's claims are typical of the claims of the members of the
18 Class. Plaintiff and all members of the Class have been similarly affected by the
19 Defendants' common course of conduct because they all relied on Defendants'
20 representations concerning their Products and purchased the Products based on
21 those representations.

22 101. Plaintiff will fairly and adequately represent and protect the interests
23 of the Class. Plaintiff has retained counsel with substantial experience in handling
24 complex class action litigation in general and scientific claims, including for
25 homeopathic drugs, in particular. Plaintiff and his counsel are committed to
26 vigorously prosecuting this action on behalf of the Class and have the financial
27 resources to do so.

1 102. Plaintiff and the members of the Class suffered and will continue to
2 suffer harm as a result of the Defendants' unlawful and wrongful conduct. A class
3 action is superior to other available methods for the fair and efficient adjudication
4 of the present controversy. Individual joinder of all members of the Class is
5 impracticable. Even if individual Class members had the resources to pursue
6 individual litigation, it would be unduly burdensome to the courts in which the
7 individual litigation would proceed. Individual litigation magnifies the delay and
8 expense to all parties in the court system of resolving the controversies engendered
9 by Defendants' course of conduct. The class action device allows a single court to
10 provide the benefits of unitary adjudication, judicial economy, and the fair and
11 efficient handling of all Class members' claims in a single forum. The conduct of
12 this action as a class action conserves the resources of the parties and of the
13 judicial system and protects the rights of Class members. Furthermore, for many,
14 if not most, a class action is the only feasible mechanism that allows an
15 opportunity for legal redress and justice.

16 103. Adjudication of individual Class members' claims with respect to the
17 Defendants would, as a practical matter, be dispositive of the interests of other
18 members not parties to the adjudication, and could substantially impair or impede
19 the ability of other class members to protect their interests.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES

ACT

California Civil Code §§ 1750, et seq.

(On Behalf of Plaintiff and the Class, as Against All Defendants)

25 104. Plaintiff repeat, reallege and incorporate by reference each and every
26 allegation contained above as if fully set forth herein.

1 105. This cause of action is brought pursuant to the Consumers Legal
2 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”). Plaintiff and
3 Class members are consumers as defined by California Civil Code § 1761(d).
4 Defendants’ Legacy Eclos Products and Current Eclos Products (“Eclos Products”
5 or “Products”) are goods within the meaning of the Act. Defendants’ advertising
6 and marketing decisions emanated from Los Angeles County, California and were
7 distributed through the United States.

8 106. Defendants violated and continue to violate the Act by engaging in the
9 following practices proscribed by California Civil Code §1770(a) in transactions
10 with Plaintiff and the Class, which were intended to result in, and did result in, the
11 sale of the Eclos Products.

- 12 • Representing that [Eclos Products have]...characteristics, ingredients,
13 uses, benefits or quantities which [Eclos Products] do not have. (Civ.
14 Code, § 1770, subd. (a) (5).)
- 15 • Representing that [Eclos Products] are of a particular standard, quality
16 or grade... if they are of another. (Civ. Code, § 1770, subd. (a) (7).)
- 17 • Advertising [Eclos Products] ...with intent not to sell them as
18 advertised. (Civ. Code, § 1770, subd. (a) (9).)
- 19 • Representing that [Eclos Products] have been supplied in accordance
20 with a previous representation when it has not. (Civ. Code, § 1770,
21 subd. (a) (16).)

22 107. Defendants violated the Act by representing through advertising of
23 Eclos Products as described above, when they knew, or should have known, the
24 representations and advertisements were false or misleading.

25 108. Plaintiff and members of the Class reasonably relied upon the
26 Defendants’ representations as to the quality and attributes of the Eclos Products.

1 109. Plaintiff and other members of the Class were deceived by
2 Defendants' representations about the quality and attributes of the Eclos Products,
3 including but not limited to the purported benefits of the Eclos Products, taken as a
4 whole, that the Eclos Products are effective in relieving various symptoms and
5 ailments. *See also* Exs. 1 - 6. Plaintiff and other Class members would not have
6 purchased the Eclos Products had they known the Defendants' claims were untrue,
7 and had they known the true nature of the Eclos Products.

8 110. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified the
9 Defendants in writing by certified mail of the particular violations of § 1770 of the
10 CLRA as to the Eclos Products, and demanded the Defendants rectify the
11 problems associated with the actions detailed above and give notice to all affected
12 consumers of their intent to so act. Defendants' wrongful business practices
13 regarding the Eclos Products constituted, and constitute, a continuing course of
14 conduct in violation of the California's Consumers Legal Remedies Act because
15 Defendants are still representing that Eclos Products have characteristics, uses,
16 benefits, endorsements, proof and abilities which are false and misleading, and
17 have injured Plaintiff and the Class. A copy of Plaintiff's letter is attached as
18 Exhibit 7 hereto.

19 111. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class
20 seek an order of this Court enjoining the Defendants from continuing to engage in
21 unlawful, unfair, or deceptive business practices and any other act prohibited by
22 law, and awarding Plaintiff and the Class damages and punitive damages.

23 112. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class
24 seek a Court order enjoining the above-described wrongful acts and practices of
25 the Defendants with respect to the Eclos Products.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

California Business and Professions Code §§ 17200, et seq.

(On Behalf of Plaintiff and the Class, as Against All Defendants)

113. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

114. Plaintiff has standing to pursue this claim as he suffered injury in fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products in reliance upon Defendants' marketing claims. Plaintiff used the Products as directed, but the Products did not work as advertised, nor provided any of the promised benefits or characteristics.

115. California’s Unfair Competition Law, Business and Professions Code § 17200 (the “UCL”) prohibits any “unfair, deceptive, untrue or misleading advertising.” For the reasons discussed above, Defendants have engaged in unfair, deceptive, untrue and misleading advertising in violation of the UCL. Defendants’ advertising and marketing decisions emanated from Los Angeles County, California, from which the advertising and marketing claims were distributed through the United States.

116. The UCL also prohibits any “unlawful... business act or practice.” Defendants violated the UCL’s prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and by violating among others, California Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§ 109875, *et seq.* (“Sherman Law”), including but not limited to Cal. Health & Safety Code §§ 110100, 110290, 110390; Cal. Bus. & Prof. Code §§ 12601, *et seq.* (“Fair Packaging and Labeling Act”), California Commercial Code § 2313(1), and the common law; *see also* Cal. Health & Safety Code § 110105 (incorporating all

1 FDCA laws and implementing regulations as the laws of this State). Such conduct
2 is ongoing and continues to this date. *See also* Exs. 1 - 6.

3 117. Plaintiff and the Class reserve the right to allege other violations of
4 law which constitute other unlawful business acts or practices.

5 118. California Business and Professions Code § 17200 also prohibits any
6 “unfair... business act or practice.”

7 119. Defendants’ acts, omissions, misrepresentations, practices and
8 nondisclosures as alleged herein also constitute “unfair” business acts and practices
9 within the meaning of the UCL in that their conduct is substantially injurious to
10 consumers, offends public policy, and is immoral, unethical, oppressive, and
11 unscrupulous as the gravity of the conduct outweighs any alleged benefits
12 attributable to such conduct. Such conduct is ongoing and continues to this date.

13 120. Plaintiff alleges violations of consumer protection, unfair competition
14 and truth in advertising laws in California, Illinois, and other states resulting in
15 harm to consumers. Plaintiff asserts violation of the public policy of engaging in
16 false and misleading advertising, unfair competition and deceptive conduct
17 towards consumers. This conduct constitutes violations of the unfair prong of the
18 UCL. Such conduct is ongoing and continues to this date.

19 121. There were reasonably available alternatives to further Defendants’
20 legitimate business interests, other than the conduct described herein.

21 122. The UCL also prohibits any “fraudulent business act or practice.”

22 123. Defendants’ claims, nondisclosures (i.e., omissions), and misleading
23 statements, as more fully set forth above, were false, misleading and/or likely to
24 deceive the consuming public within the meaning of the UCL. Such conduct is
25 ongoing and continues to this date.

26 124. Defendants’ conduct caused and continues to cause substantial injury
27 to Plaintiff and the other members of the Class. Plaintiff has suffered injury in fact
28

1 as a result of Defendants' unfair conduct in the form of monies lost as a result of
2 Defendants' conduct as complained of herein.

3 125. Defendants have thus engaged in unlawful, unfair and fraudulent
4 business acts and practices and false advertising, entitling Plaintiff to injunctive
5 relief against Defendants, both retrospective and prospective, as set forth in the
6 Prayer for Relief.

7 126. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an
8 order requiring Defendants to immediately cease such acts of unlawful, unfair and
9 fraudulent business practices and requiring Defendants to engage in a corrective
10 advertising campaign, and make labeling changes. Plaintiff also seeks an order for
11 retrospective injunctive relief to correct the consequences of Defendants' acts,
12 *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 656 (1996), such as
13 creation of an impound fund and a recall of the unlawful, false and deceptively
14 labeled Products. *See also People v. Toomey*, 157 Cal.App.3d 1, 21 (1984).
15 Plaintiff also seeks an order for the disgorgement and restitution of all monies from
16 the sale of Defendants' Products, a form of retrospective injunctive relief, and a
17 remedy specifically provided by statute, for monies that may have been acquired
18 through Defendants' acts of unlawful, unfair, and/or fraudulent competition.

19 **THIRD CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

21 *California Business and Professions Code §§ 17500, et seq.*

22 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

23 127. Plaintiff repeats, realleges and incorporates by reference each and
24 every allegation contained above as if fully set forth herein.

25 128. Plaintiff has standing to pursue this claim as he suffered injury in fact
26 as a result of Defendants' actions as set forth herein. Specifically, prior to the
27 filing of this action, Plaintiff purchased Eclos Products in reliance upon
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1 Defendants' marketing claims. Plaintiff and putative Class members used the
2 purchased Eclos Products as directed, but the Products did not work as advertised,
3 nor provided any of the promised benefits or uses or characteristics.

4 129. Defendants' business practices as alleged herein constitute unfair,
5 deceptive, untrue, and misleading advertising pursuant to California Business and
6 Professions Code §§ 17500, *et seq.* because Defendants advertised Eclos Products
7 in a manner they know is untrue or misleading, or that reasonably should have
8 been known to Defendants to be untrue or misleading.

9 130. Defendants' wrongful business practices have caused injury to
10 Plaintiff and the Class.

11 131. Pursuant to section 17535 of the California Business and Professions
12 Code, Plaintiff and the Class seek an order of this court enjoining the Defendants
13 from continuing to engage in deceptive business practices, false advertising, and
14 any other act prohibited by law, including those set forth in the complaint, and for
15 a corrective advertising campaign.

16 132. Plaintiff and the Class also seek an order for the disgorgement and
17 restitution of all monies that Defendants' may have acquired through acts of
18 unlawful, unfair, deceptive and/or fraudulent business competition. Plaintiff also
19 seeks an order for retrospective injunctive relief to correct the consequences of
20 Defendants' acts, *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 656
21 (1996), such as creation of an impound fund, and a recall of the unlawful, false and
22 deceptively labeled Products. *See also People v. Toomey*, 157 Cal.App.3d 1, 21
23 (1984).

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FOURTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

(On Behalf of Plaintiffs and all Class Members, as Against All Defendants)

133. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

134. On the Products' labels and through their marketing campaign as described above, Defendants made affirmations of fact or promises, or description of goods, which formed "part of the basis of the bargain" at the time of purchase. *See* Exs. 1-6, attached hereto.

135. These warranties, reflected by Defendants' quoted language throughout this complaint, and as provided by state common law or statute, were breached because the Products did not live up to their warranties, and that breach caused injury in the form of the lost purchase price for the Products. *See, e.g.*, Cal. Com. Code § 2313(1); *see also Zwart v. Hewlett-Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online assertions can create warranties).

136. As a result of Defendants' breach of their warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Products they purchased.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(On Behalf of Plaintiff and the Class, as Against All Defendants)

137. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

138. Defendants, through their acts and omissions as set forth herein, in their sale, marketing and promotion of purchased Eclos Products, made affirmations of fact or promises to Plaintiff and Class members that the Eclos Products possess certain uses, benefits, and characteristics, as discussed herein.

139. Plaintiff and the Class bought the Eclos Products, which are manufactured, advertised and sold by Defendants.

140. Defendants are merchants with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied warranty that those goods were merchantable for their intended use.

141. However, Defendants breached that warranty implied in the sale of goods in that the Eclos Products did not provide the claimed uses, benefits, and characteristics, as set forth in detail herein.

142. As a result of Defendants' conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendants to be merchantable in that they did not conform to the promises and affirmations made on the container or label of the goods.

143. Plaintiff and the Class have sustained damages as a proximate result of the foregoing breach of implied warranty, in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,

15 U.S.C. §§ 2301, *et. seq.*

(On Behalf of Plaintiff and the Class, as Against All Defendants)

144. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

145. Plaintiffs bring their claim individually and on behalf of the members of the Class.

146. Plaintiff and the Class assert state law warranty claims arising under the laws of the States of California and Illinois, as allowed under Sections 2301(7) and 2310(d) of the MMWA.

1 147. In addition, Defendants' Products are consumer products as defined in
2 15 U.S.C. § 2301(1).

3 148. Plaintiff and the other Class members are consumers as defined in 15
4 U.S.C. § 2301(3).

5 149. Defendants are suppliers and warrantors as defined in 15 U.S.C. §§
6 2301(4) and (5).

7 150. In connection with the sale of the Products, Defendants issued written
8 warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Products
9 offer effective relief from various ailments and symptoms (as listed in Table A)
10 and possessed certain attributes and qualities, as described herein, when in fact,
11 these Products do not provide relief for any of these ailments or symptoms.

12 151. Defendants' warranties include, *inter alia*,

- 13 • Legacy Eclos and Current Eclos Products
 - 14 ◦ Clinically Proven;
 - 15 ◦ “Anti-Aging.”
- 16 • Legacy Eclos Products
 - 17 ◦ Contains High Potency Plant Stem Cells;
 - 18 ◦ “100% of Subjects Experienced Visible Decrease in Wrinkle
19 Depth”;
 - 20 ◦ Advanced Targeted Solutions.
- 21 • Current Eclos Products
 - 22 ◦ Apple Stem Cell Skin Care;
 - 23 ◦ “Apple Stems[sic] Cells Are Clinically Proven to Reduce
24 the Appearance of Wrinkles and Improve the Texture of
25 Skin in Two Weeks,” or, “Clinically Proven to Visibly
26 Repair & Renew Skin in Two Weeks”;
 - 27 ◦ Website advertising: High-tech, anti-aging skin care with
28 Apple Stem Cell Technology.

29 152. By breaching the express written warranties as described herein,
30 Defendants violated the statutory rights of Plaintiff and Class members pursuant to
31 the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging
32 Plaintiff and other Class members.

153. Plaintiff notified the Defendants in writing of their claims and that the Plaintiff is acting on behalf of the Class. *See* Ex. 7, CLRA Letter.

SEVENTH CAUSE OF ACTION

VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT

815 Illinois Compiled Statutes 502/2, et seq.

(On Behalf of Plaintiff and All Class Members, as Against All Defendants)

154. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein

155. In Illinois, the “Consumer Fraud and Deceptive Business Practices Act” 815 Ill. Comp. Stat. 502/2, *et seq.* (“the Act”), like the consumer fraud acts of numerous other states across the nation, prohibits deceptive acts and practices in trade or commerce, including the sale of the Eclos Products by the Defendants.

156. Plaintiff and the Class were injured by Defendants' deceptive misrepresentations, concealments and omissions and these misrepresentations, concealments and omissions were material and deceived Plaintiff and the Class.

157. Defendants do business in Illinois, sell and distribute the Eclos Products in Illinois, and engage in deceptive acts and practices in connection with the sale of the Products in Illinois.

158. The Defendants created and caused the anti-aging wrinkle repair claims to be published to consumers in connection with the sale of the Products.

159. The Defendants displayed the anti-aging and wrinkle repair claims at the point of sale to induce and close the sale with Plaintiff and Class members.

160. The Eclos Products that Plaintiff and the Class purchased is a “consumer item” as that term is defined under the Act.

161. Defendants misrepresent and deceptively conceal, suppress and/or omit material information known to Defendants as set forth above concerning Eclos Products which has caused damage and injury to Plaintiff and the Class.

162. Defendants' deceptive acts are occurring in a course of conduct involving trade and commerce in Illinois.

163. Defendants' deceptive acts proximately caused actual injury and damage to Plaintiff and the Class.

164. Defendants intended Plaintiff and all Class members to rely on their deceptive acts.

165. Defendants' conduct constituted a consumer fraud under the Illinois Consumer Fraud Act.

PRAYER FOR RELIEF

166. Wherefore, Plaintiff, on behalf of himself, all others similarly situated and the general public, prays for judgment against the Defendants as to each and every cause of action, including:

- A. An order declaring this action to be a proper Class Action and requiring Defendants to bear the costs of Class notice;
- B. An order awarding declaratory relief, retrospective and prospective injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein and injunctive relief to remedy Defendants' past conduct, including a recall and corrective advertising campaign;
- C. An order awarding restitution of the purchase price of the Legacy Eclos Products and the Current Eclos Products ("Products") to Plaintiff and the proposed Class members; and restitutionary disgorgement of Defendants' revenues from all the Products purchased by Plaintiffs and the proposed Class members under the UCL and FAL, as well as under the Illinois Consumer Fraud Act

1 and under applicable multi-state consumer protection statutes as
2 set forth in the Complaint;

3 D. An order awarding damages under Plaintiff and the Class' Illinois
4 Consumer Fraud Act, applicable multi-state consumer protection
5 statutes set forth in the Complaint, and for the warranty claims
6 regarding the Products;

7 E. An order awarding attorneys' fees and costs to Plaintiff and the
8 Class;

9 F. An order providing for all other such equitable relief as may be
10 just and proper.

11 **JURY DEMAND**

12 Plaintiff hereby demands a trial by jury on all issues so triable.

14 Dated: August 14, 2013 /s/ Ronald A. Marron

15 By: Ronald A. Marron

17 **LAW OFFICES OF RONALD A.**
18 **MARRON, APLC**
19 RONALD A. MARRON
20 SKYE RESENDES
21 ALEXIS WOOD
22 651 Arroyo Drive
23 San Diego, California 92103
24 Telephone: (619) 696-9006
25 Facsimile: (619) 564-6665

27 ***Attorneys for Plaintiff and the Proposed***
28 ***Class***

1 I, Corey Buhs, declare as follows:

2 1. I am the Plaintiff in this action. I make this affidavit as required by
3 California Civil Code Section 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of
5 this action because Defendant is doing business in this county.

6 I declare under penalty of perjury under the laws of the United States that
7 the foregoing is true and correct.

8

9 Dated: Aug. 14, 2013



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11 Corey Buhs

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AFFIDAVIT OF VENUE

Table of Exhibits

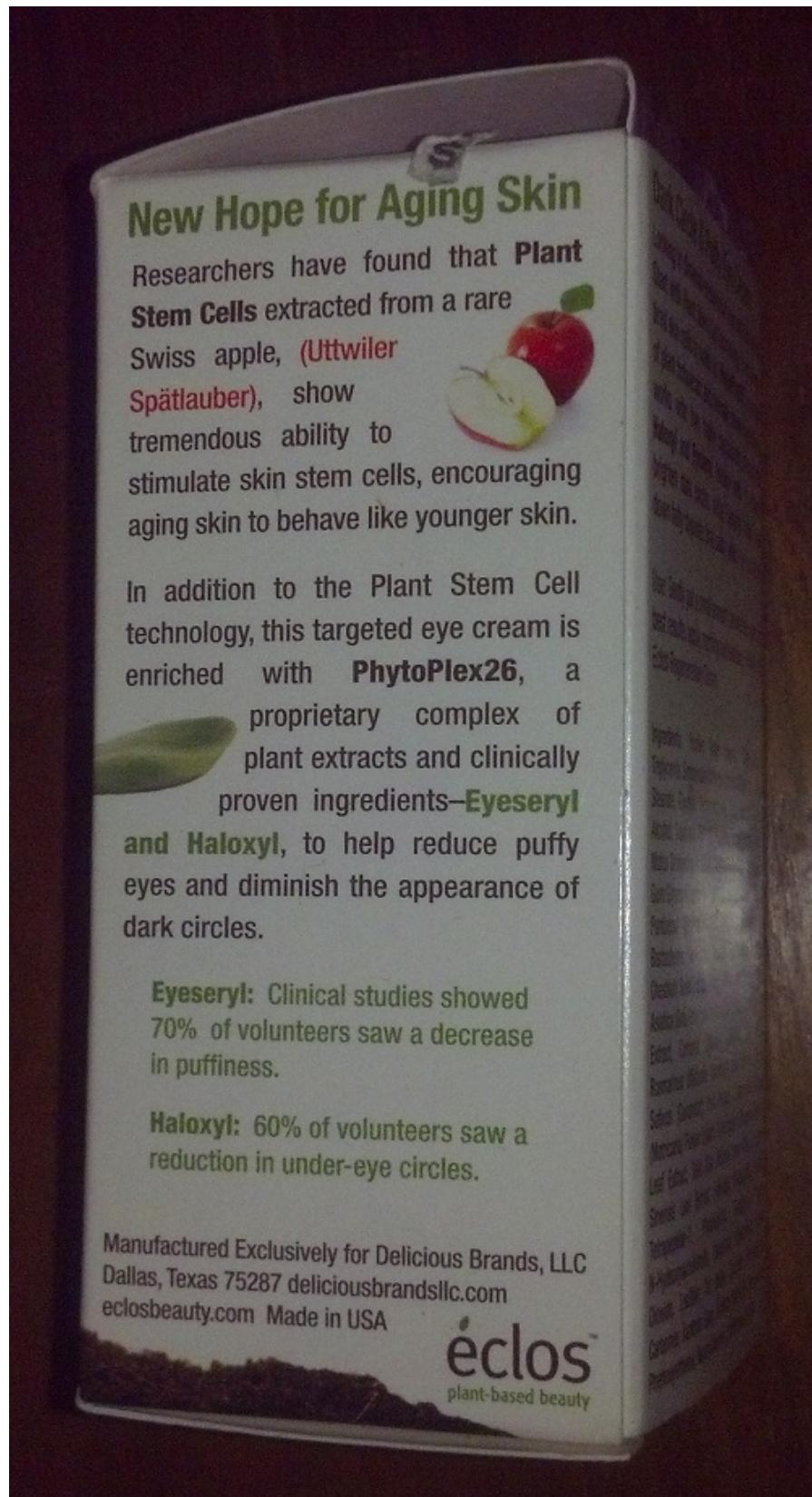
EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE NUMBERS
Exhibit 1	Eclos Legacy Products Packaging (Type A)	1 – 3
Exhibit 2	Eclos Legacy Products Packaging (Type B)	4
Exhibit 3	Eclos Legacy Product Packaging (Type B): Travel/Starter Kit	5
Exhibit 4	Example of Eclos Legacy Products Ingredients Panel: Moisture Therapy Regenerative Cream	6
Exhibit 5	Eclos Current Product Packaging	7
Exhibit 6	Current Eclos Product, Recent Re-Design of SPF Daily Hydra Primer SPF 30	8
Exhibit 7	Plaintiff's CLRA Letter	9 – 12

EXHIBIT 1

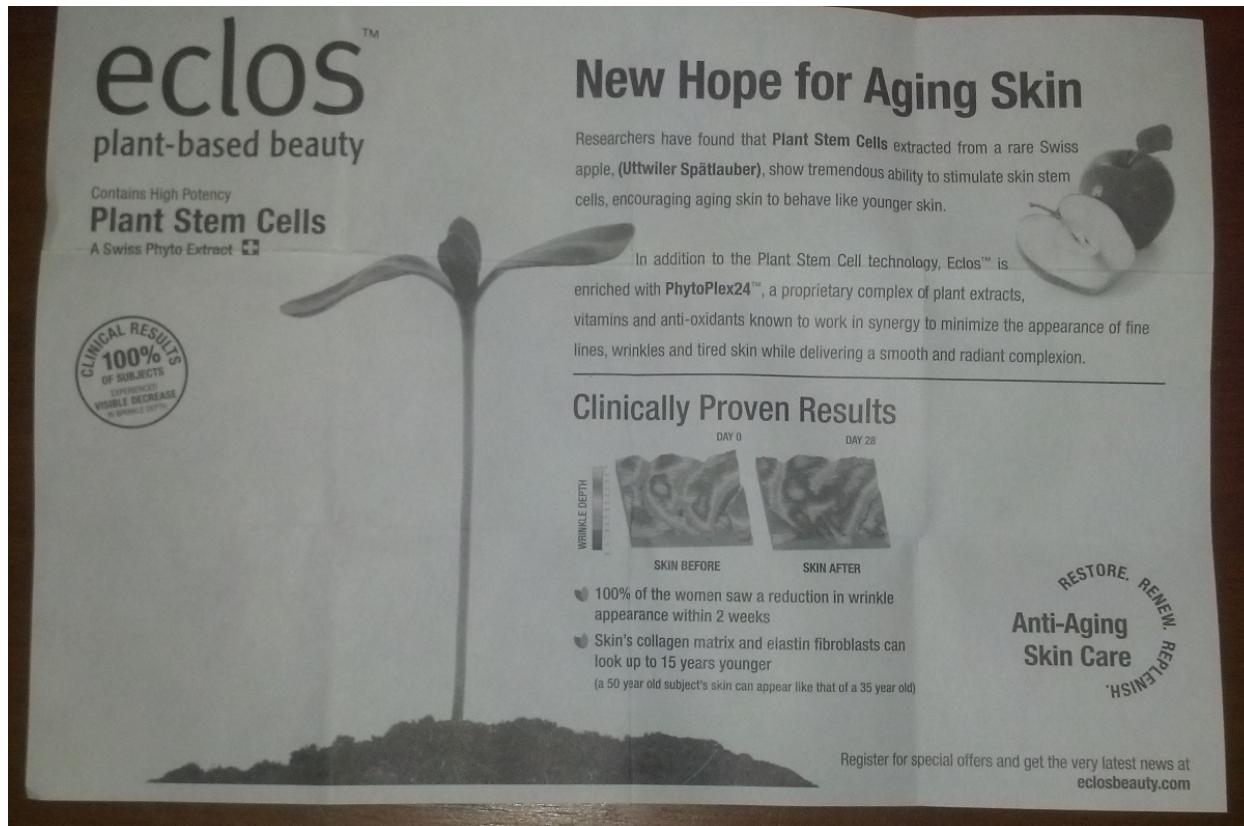
Eclos Legacy Products Packaging (Type A)



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT

EXHIBIT 2

Eclos Legacy Products Packaging (Type B)



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT

EXHIBIT 3

Eclos Legacy Product Packaging (Type B):

Travel/Starter Kit



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT

EXHIBIT 4

Example of Eclos Legacy Products Ingredients Panel: Moisture Therapy
Regenerative Cream

Black box added to highlight “plant stem cell” claim.

**Moisture Therapy
Regenerative Cream**

The latest in Plant Stem Cell technology is believed to be the holy grail of anti-aging skin care. This remarkable facial cream containing high potency Plant Stem Cells is formulated specifically to help protect your own skin stem cells. As a result, it promotes the self-renewal capacity of the skin and helps **slow the signs of aging**. By revitalizing your skin stem cells, it **helps tighten sagging skin** and postpones wrinkling. The added benefits of Chamomile and Cucumber found in the powerhouse complex PhytoPlex24™ provides the **ultimate in soothing** and defensive properties for the skin.

Use: May be used alone or for optimal results apply over Eclos™ Cellular Activator Face Serum day or night.

Ingredients: Purified Water (Aqua), Glycerin, Olea Europaea Fruit Oil (Olive Oil), Dimethicone, Cyclopentasiloxane, Butyrospermum Parkii (Shea Butter), Ethylhexyl Palmitate, Glyceryl Stearate, Polysilicone-11, Palmitoyl Glycine, Peg-100 Stearate, **Malus Domestica Fruit Cell Culture (Plant Stem Cell)** Xanthan Gum/Glycerin/Lecithin/Phenoxyethanol/Water (Aqua); Tocopheryl Acetate (Vitamin E), Aesculus Hippocastanum (Horse Chestnut) Seed Extract, Ginkgo Biloba Leaf Extract, Centella Asiatica (Gotu Kola) Extract, Camellia Oleifera (Green Tea) Leaf Extract, Curcuma Zeodaria (Turmeric) Leaf Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Cucumis Sativus (Cucumber) Fruit Extract, Chamomilla Recutita (Matricaria) Flower Extract, Symphytum Officinale (Comfrey) Leaf Extract, Salix Alba (Willow) Bark Extract, Amyris Balsamifera Bark (West Indian Rosewood) Oil, Aniba Rosaeodora (Rosewood) Wood Oil, Cananga Odorata Flower (Ylang-Ylang) Oil, Cymbopogon Martini (Palmarosa) Oil, Elettaria Cardamomum (Cardamon) Seed Oil, Pelargonium Graveolens (Geranium) Flower Oil, Nylon-12, Silica, PEG-10 Dimethicone, Polysorbate 40, Isohexadecane, Ammonium, Polyacryloyldimethyl Taurate, Polyacrylamide, C13-14 Isoparaffin, Laureth-7, Sorbitan Stearate, Carbomer, Magnesium Aluminum Silicate, Sodium Hydroxide, Disodium EDTA, Phenoxyethanol, Caprylyl Glycol, Sorbic Acid

EXHIBIT 5

Eclos Current Product Packaging



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT

EXHIBIT 6

Current Eclos Product, Recent Re-Design of SPF Daily Hydra Primer SPF 30.



Buhs v. pH Beauty Labs, Inc.
CLASS ACTION COMPLAINT

EXHIBIT 7

Law Offices of
Ronald A. Marron
A Professional Law Corporation

3636 Fourth Avenue, Ste 202
San Diego, CA 92103

Tel: 619.696.9009
Fax: 619.564.6665

August 9, 2013

Via: Certified Mail, (receipt acknowledgment with signature requested)

pH Beauty Labs, Inc.
Attn: LEGAL DEPARTMENT
1964 Westwood Blvd., Suite 300
Los Angeles CA 90025

RE: NOTICE: Violations of the California Consumer Legal Remedies Act and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this letter constitutes notice under the California Consumer Legal Remedies Act, (“CLRA”), California Civil Code Section 1750, *et seq.*, (the “ACT”) — pursuant specifically to Civil Code Section 1782 — notifying **pH Beauty Labs, Inc.** (“YOU” and “YOUR”) of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Corey Buhs. Mr. Buhs purchased the Eclos Travel/Starter Kit at Walgreens drug stores, in Bloomington and Peoria, Illinois, in 2012 and 2013. The Eclos Travel/Starter Kit contained six (6) different Eclos Products manufactured for and marketed by YOU: (1) Facial Cleanser Skin Prep, (2) Cellular Activator Face Serum, (3) Moisture Therapy Regenerative Cream, (4) Restorative Eye Cream, (5) Instant Radiance Facial Scrub, and (6) Skin Renewal Clay Mask. Mr. Buhs was exposed to and saw YOUR claims about the product, purchased the product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

Through YOUR wholly-owned subsidiary, Freeman Beauty Labs LLC (“Freeman”), YOU currently market a line of Eclos anti-aging products, six of which were purchased by Mr. Buhs in the Eclos Travel/Starter Kit. The Eclos anti-aging products are purported to contain stem cells, or extracts of stem cells derived from the domestic apple (*Malus domestica*), supposedly from the Uttwiler Spätlauber cultivar thereof. YOU currently market at least eight Eclos products (“Current Eclos Products”):

1. Anti-Aging Starter Kit
2. Cellular Activator Face Serum
3. Daily HydraPrimer SPF 30
4. Instant Radiance Facial Scrub
5. Moisture Therapy Regenerative Cream

6. Restorative Eye Cream
7. Skin Prep Cleanser
8. Skin Renewal Clay Mask

All of the eight (8) above-listed Current Eclos Products are sold in packages claiming they contain “Plant Stem Cell Skin Care” by means of prominent bold display type on the external point-of-sale packaging; the front of the Current Eclos Products packages visible in stores also displays large bold type that states that the products are “Anti-Aging.” Upon opening a Current Eclos Product package, the consumer gains access to a product container, which similarly indicates in large bold print that the contents are “Anti-Aging.”

YOU also marketed, and continue to market, the following products (“Legacy Eclos Products”), six of which were purchased by Mr. Buhs in the Eclos Travel/Starter Kit as set forth above.

1. Facial Cleanser Skin Prep
2. Cellular Activator Face Serum
3. Moisture Therapy Regenerative Cream
4. Restorative Eye Cream
5. Instant Radiance Facial Scrub
6. Skin Renewal Clay Mask
7. Travel/Starter Kit (*contains products 1-6*)
8. Super Concentrated Night Booster Fluid
9. Intensive Skin Restoration Body Cream
10. Intense Moisture Hydrating Mask
11. Dark Circle & Puffy Eye Cream
12. Wrinkled Forehead & Crow’s Feet Cream
13. Age Spot Treatment

All of the thirteen (13) above-listed Legacy Eclos Products were, and continue to be, sold in packages claiming they contain “High Potency Plant Stem Cells” by means of prominent bold display type on the external point-of-sale packaging, and the front of the package visible in stores reads “Anti-Aging Skin Care.” Upon opening a Legacy Eclos Product package, the consumer gains access to a product container, which indicates in large bold print that the contents are “Anti-Aging.”

YOU falsely market YOUR products by putting false and misleading claims on the labels.

For example, YOU claim that each Legacy Eclos Product is “Anti-Aging,” and “Contains High Potency Plant Stem Cells,” promising “Clinical Results” where “100% of Subjects Experienced Visible Decrease in Wrinkle Depth.” The purported stem cell-derived ingredient in the Legacy Eclos Products is “*Malus Domestica Fruit Cell Culture (Plant Stem Cell)*.”

In fact, the Legacy Eclos Products have no efficacy beyond that attributable to ingredients other than “*Fruit Cell Culture (Plant Stem Cell)*.” Further, even if YOUR product contained “*Fruit Cell Culture (Plant Stem Cell)*” those ingredients are ineffective and/or so greatly diluted as to be non-existent in the product, such that the product is ineffective for its intended uses. The

trace amounts of “*Fruit Cell Culture (Plant Stem Cell)*” allegedly contained in YOUR Legacy Eclos Products do not aid in the suggested remedial efficacy.

Similarly, YOU claim that the Current Eclos Products are “Anti-Aging,” “Apple Stem Cell Skin Care” and “Clinically Proven to Reduce the Appearance of Wrinkles and Improve the Texture of Skin in Two Weeks.” The purported stem cell-derived ingredient in the Freeman-Eclos Products is “*Malus Domestica Fruit Cell Culture Extract*.”

In fact, the Current Eclos Products have no efficacy beyond that attributable to ingredients other than “*Fruit Cell Culture Extract*”. Further, even if YOUR product contained “*Fruit Cell Culture Extract*,” those ingredients are ineffective and/or so greatly diluted as to be non-existent in the product, such that the product is ineffective for its intended uses. The trace amounts of “*Fruit Cell Culture Extract*” allegedly contained in YOUR products do not aid in the suggested remedial efficacy.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR products under the representation that they provide anti-aging benefits, when in fact they do not.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

- § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.
- § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.
- § 1770(a)(9): advertising goods with intent not to sell them as advertised.
- § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our client, Corey Buhs, and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages,

and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

In addition, California Civil Code Section 1780 (b) provides in part that: "Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to **five thousand dollars** (\$5,000)... [emphasis added]".

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,
THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron
Ronald A. Marron
Attorney for Corey Buhs, and all others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge S. James Otero and the assigned Magistrate Judge is Michael R. Wilner.

The case number on all documents filed with the Court should read as follows:

CV13-05993 SJO (MWRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

August 15, 2013

Date

By Lori Wagers
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

Law Offices of Ronald A. Marron, APLC
 Ronald A. Marron (SBN 175650)
 651 Arroyo Drive
 San Diego, CA 92103
 Telephone: (619) 696-9006

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

COREY BUHS, on behalf of himself, all others
 similarly situated and the general public,

CASE NUMBER

CV13-05993 SSQ (mrw)

PLAINTIFF(S)
 v.
 PH BEAUTY LABS, INC., a California corporation,
 individually and d/b/a Freeman Beauty Labs;
 FREEMAN BEAUTY LABS, a California corporation

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Ronald A. Marron, whose address is 651 Arroyo Drive, San Diego, CA 92103. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 8-15-13

By: LORI WAGERS

Deputy Clerk

1146

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) COREY BUHIS, on behalf of himself, all others similarly situated and the general public		DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) pH BEAUTY LABS, INC., a California corporation, individually and d/b/a Freeman Beauty Labs; FREEMAN BEAUTY LABS, a California corporation			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Law Offices of Ronald A. Marron, APLC 651 Arroyo Drive San Diego, CA 92103 Telephone: (619) 696-9006		(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)			
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)			
<input type="checkbox"/> 1. U.S. Government Plaintiff	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4		
<input type="checkbox"/> 2. U.S. Government Defendant	<input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5		
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6		
IV. ORIGIN (Place an X in one box only.)		5. Transferred from Another District (Specify) <input type="checkbox"/> 6. Multi-District Litigation <input type="checkbox"/>			
<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened		
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.)					
CLASS ACTION under F.R.Cv.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		MONEY DEMANDED IN COMPLAINT: \$ over 5,000,000.00			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Violation of CLRA, UCL, FAL, Breaches of Express Warranties, Implied Merchantability, and Violations of Magnuson-Warranty Act, and ICFR					
VII. NATURE OF SUIT (Place an X in one box only).					
OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	TORTS	SOCIAL SECURITY	
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty Other:	<input type="checkbox"/> 861 HIA (1395ff)	
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))	
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 865 RSI (405 (g))	
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	FORFEITURE/PENALTY	FEDERAL TAX SUITS	
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	CIVIL RIGHTS	LAW		
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act		
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations		
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act		
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act		
		<input type="checkbox"/> 445 American with Disabilities- Employment	<input type="checkbox"/> 790 Other Labor Litigation		
		<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act		
		<input type="checkbox"/> 448 Education			

FOR OFFICE USE ONLY: Case Number

CV13-05993-SJO (mrw)

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
	Illinois

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

***Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Ronald M. DATE: 08/14/2013
Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))